

### REMARKS

Claims 2 and 3 are pending in this application. Claims 1 and 4-20 have been previously canceled without prejudice. In light of the following remarks, applicants respectfully request reconsideration of this application and allowance of the pending claims to issue.

#### Rejection under 35 U.S.C. § 102(a)

The Office Action states that claims 2 and 3 are rejected under 35 U.S.C. § 102(a) as allegedly anticipated by Rojas et al.

Applicants provide herewith a Declaration under 37 C.F.R. § 1.132 (Katz-type Declaration) of co-inventor, Dr. John Sondek, demonstrating that the present invention was not "known or used by others" on the basis of the Rojas et al. publication and that therefore the Rojas et al. publication is not a prior art reference under 35 U.S.C. § 102(a) to the present application. Thus, this rejection is believed to have been rendered moot and applicants respectfully request its withdrawal.

Having addressed all of the issues raised in the present Office Action, applicants believe this application is in condition for allowance, which action is respectfully requested. The Examiner is invited and encouraged to contact the undersigned directly, if such contact will expedite prosecution of the pending claims to issue.

No fee is believed due with this response. However, the Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No 50-0220.

Respectfully submitted,



Mary L. Miller  
Registration No. 39,303

#### Customer No. 20792

Myers Bigel Sibley & Sajovec, P.A.  
P. O. Box 37428  
Raleigh, North Carolina 27627  
Telephone: (919) 854-1400  
Facsimile: (919) 854-1401

#### CERTIFICATION OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on March 29, 2010.

  
Claire Wimberly